

# **The Right to Farm Act In New Jersey**

**State Agriculture Development Committee  
September 23, 2015**

# Basics of Right to Farm

- ❑ Procedures
- ❑ Eligibility criteria
- ❑ Protected activities
- ❑ Legal considerations
- ❑ Preemption and nuisance protection



# RTF Act: Procedures

## 1. Site-Specific AMP Request

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- Acts as a proactive “shield” for farm owner/operator



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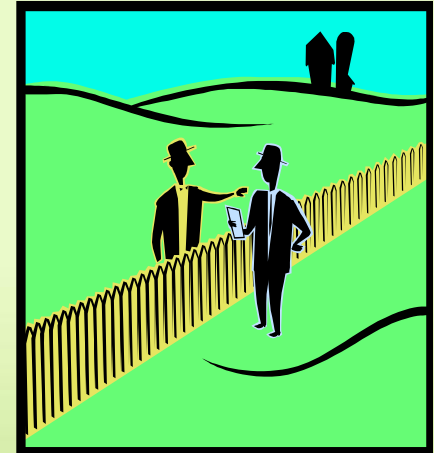
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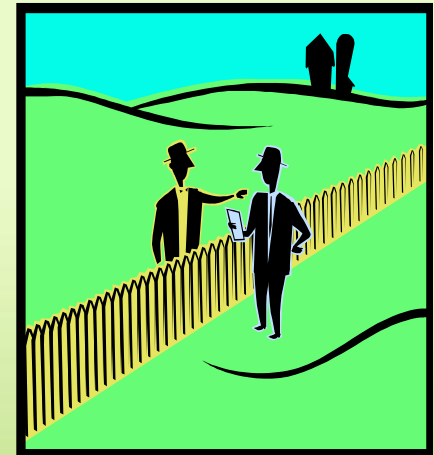
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## 4. Agricultural Mediation Program

- Parties can also use mediation, an alternative to the formal RTF process
- Mediation is free, voluntary, confidential, easy



# RTF Act: Criteria to Receive Protections

Threshold criteria are formally determined by CADB (or by SADC where NO CADB exists):

- ❑ The farm meets the definition of commercial farm in N.J.S.A. 4:1C-3
  - ❑ FMU  $\geq$  5 ac., satisfying FA criteria, & producing products worth \$2,500; or
  - ❑ FMU < 5 ac., otherwise satisfying FA criteria, & producing products worth \$50,000; or
  - ❑ FMU that is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth \$10,000 or more annually.
- ❑ The farm is located in an area which, as of 12/31/97, agriculture is a permitted use, OR, was in operation as of 7/2/98 (N.J.S.A. 4:1C-9)
- ❑ Whether the activity is included in the list of protected activities in N.J.S.A. 4:1C-9.

# RTF Act: Criteria to Receive Protections

## Protected Activities under N.J.S.A. 4:1C-9:

- a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities with SIC classifications for agriculture, forestry, fishing and trapping
- b. Process and package agricultural output of farm
- c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards
- d. Replenish soil nutrients and improve soil tilth
- e. Control pests, predators and diseases of plants and animals
- f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas
- g. Conduct on-site disposal of organic agricultural wastes
- h. Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm
- i. Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of, and the rules and regulations adopted pursuant to, P.L. 2009, c.213
- j. Engage in any other agricultural activity as determined by the SADC and adopted by rule...



# CADB/SADC Threshold Determinations

Determinations **MUST** be made **BEFORE** CADB/SADC can hold hearing on merits of SSAMP/RTF complaint

- ❑ Commercial farm; Ag permitted area; Use not protected

Example #1: (Complaint - Moriuchi) On-farm processing of wood products not produced from the farm management unit.

Example #2: (SSAMP - Fisher) Harvesting spring water on farm mngt unit.

- ❑ Ag permitted area; Use is protected; Insufficient commercial farm income

Example: (SSAMP - Adams) Harvesting of mushrooms and mushroom logs.

# CADB's Primary Jurisdiction



## □ CADB has “Primary” Jurisdiction (vs. “Exclusive”)

“There may be instances where a CADB or the SADC concludes that an issue is beyond the jurisdiction of the agency, that adherence to local land use ordinances is appropriate, or even that there is no preemption on a specific issue, however that determination shall be made by the CAB or SADC in the first instance, rather than by the municipality or a court.”

*Township of Franklin v. den Hollander, Superior Court of N.J., Appellate Division (2001)*

## □ Primary = situations in which BOTH the CADB and other agencies (municipality, county, etc.) have authority to make decision, but the CADB is better equipped to address the issue, at least in the first instance.

- Municipality/complainant **MUST** first file a complaint with the CADB **BEFORE** filing ANY action in ANY court
- CADB has **NO** authority to decline jurisdiction due to pendency of a municipal court/superior court complaint against commercial farmer

# Limits to CADB's Jurisdiction



## Health and Safety

“...although the CAB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views. Because the authority of the CAB is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practice with these standards in mind.”

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

“The required attention to public health & safety imposes a limitation on such jurisdiction and requires a CADB to consider the impact of municipal land use ordinances, deferring to the municipality when appropriate.”

Township of Franklin v. den Hollander, N.J. Supreme Court (2002)

# Limits to CADB's Jurisdiction



## Appropriate Municipal Regulation

“...In sum, in exercising its authority under the Act, the CAB or SADC must afford a local agency comity in recognition that the municipality interests must be appropriately acknowledged and considered.”

*Township of Franklin v. den Hollander, N.J. Superior Court, Appellate Division (2001)*

“The Boards must act in a matter consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the practice”

*Township of Franklin v. den Hollander, N.J. Supreme Court (2002)*

# So, Preemption of Local Regulations:

- ❑ Agricultural activities MAY preempt municipal and county regulations
- ❑ Appropriate consideration and deference MUST be given to local standards

## BALANCING TEST:

- Balance agricultural needs against municipal public health and safety concerns
- Farmer has to show “legitimate agriculturally-based reason” for not complying with municipal regulations



# Preemption of Local Regulations:

## But what about SITE PLAN REVIEW?



- ❑ Review of site plan elements is often needed (particularly for On-farm direct marketing facilities)
- ❑ CADBs maintain primary jurisdiction over local regulations, such as when SSAMP requests are made, but...
- ❑ Complexity of site plan review process might exceed the financial or technical capabilities of CADBs
- ❑ CADBs do not have statutory jurisdiction to review some elements

# Preemption of Local Regulations



## Farmers may:

Apply to CADB for SSAMP - and CADB can give approval of many site plan elements, but deferring to local review over others

OR

Apply to municipality for site plan review - and seek relief from specific requirements with the CADB afterward

## CADBs and/or municipality can:

**Waive or reduce requirements based on site-specific considerations**

(for example: scale, intensity, farm's setting, road, minimum improvements needed for safety)

# RTF Act: Other Eligibility Requirements

## Compliance with generally accepted agricultural management practices

- ❑ AMPs adopted by SADC or a site-specific AMP

## Compliance with applicable state and federal laws and regulations. Examples:

- ❑ Stormwater management
- ❑ Freshwater wetlands
- ❑ Animal waste management
- ❑ **BUT NOT** child support payments, federal taxes, etc. (not affecting use of farm for agricultural activities)



## Does not pose a threat to public health and Safety

- ❑ Example: CSA's entrance/exit driveway creates a traffic hazard on intersecting public road





# State Laws/Regs Delegated to Towns

- ❑ State laws & regulations must **STILL** be complied with even though enforcement has been delegated to the municipality or county & is set forth in a local ordinance or county resolution.

Example #1: NJ stormwater management rules

Example #2: County Environmental Health Act, etc.

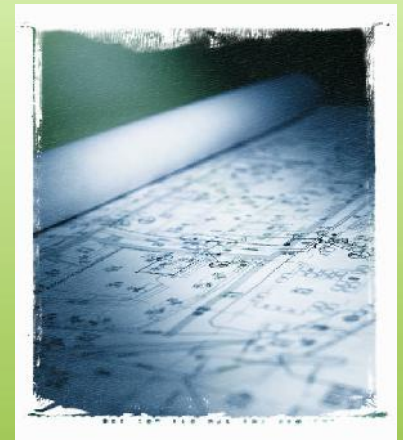


- ❑ **BUT**, if municipality or county requirements exceed state standards, preemption is possible (not a given)

Example #1: Municipality's stormwater management ordinance exceeds state standards and requires a 1,000 foot setback to streams

Example #2: Municipality adopts a septic code requiring > 10 feet to ground water

CADB must still balance local laws with farmer's legitimate need to engage in the agricultural activity



- ❑ **AND** CADBs have the right to defer issues back to the municipality if too complex for the CADB

# Other Direction from the Court:



## Due Process Concerns - *Especially for SSAMPs*

“Agricultural boards must conscientiously consider the impact of the proffered agricultural use on surrounding property owners. Failure to do so is an abuse of discretion. Boards shall provide notice to affected property owners when an application is made, as in this case, by the farmer. Failure to do so in clear terms, describing with particularity the subject of the application and the consequences of the determination to be made, may deprive the determination of its binding effect on those individuals. Boards must temper their determinations with due consideration of the impact on affected parties”.

Curzi v. Raub, N.J. Superior Court, Appellate Division (2010)

# **Right to Farm Protections - Overview**

## **Two types of protection**

- ☐ From restrictive local regulations - Preemption of municipal/county ordinances
- ☐ From neighbor nuisance suits - Irrebuttable presumption that no commercial agricultural operation constitutes a public or private nuisance

**CADB or SADC must determine that RTF eligibility criteria are met, hold public hearing, and pass resolution with findings**

# RTF Procedures:

## Overview Notes



# Right to Farm Procedures

- ❑ Right to Farm procedures were recently updated for consistency with NJ statute (N.J.S.A. 4:1C-10.1)
- ❑ Site-specific AMPs - N.J.A.C. 2:76-2.3 and 2.4
- ❑ Right to Farm Complaints - N.J.A.C. 2:76-2.7
- ❑ The rule changes were proposed on June 17, 2013, approved for adoption on January 31, 2014 after public comments were received, and became effective upon publication in the New Jersey Register on April 7, 2014.

# Site-specific AMPs and RTF Complaints - CADB's Make Threshold Eligibility Findings Before Continuing

For both processes, CADB must 1<sup>st</sup> determine:

- ❑ Meets definition of commercial farm
- ❑ Locational requirements
- ❑ Dispute involves activity listed on list of RTF eligible activities

If these criteria not met, CADB dismisses the case

- ❑ CADB's action is appealable to SADC

Example: Farm owner wants RTF protection to park non-ag trucks

If criteria are met, RTF process continues

- ❑ For site-specific AMPs, CADB holds a hearing and makes a determination
- ❑ For complaints - If there is an AMP, CADB holds a hearing and makes a determination. If there is no AMP, CADB forwards case to SADC for a hearing.



# RTF Complaints: Procedure for Complaints with Activities NOT addressed by a “rule AMP” or SSAMP

The **NEW** procedure for complaints with activities not addressed by a rule AMP or SSAMP:

- ❑ CADB forwards complaint to SADC
- ❑ SADC holds public hearing **limited to whether the disputed activity constitutes a generally accepted ag management practice**
- ❑ SADC sends hearing report to CADB
- ❑ CADB holds **its** public hearing **on the specifics of the dispute**
- ❑ If appealed, sent back to SADC w/in 10 days & forwarded to OAL, with final SADC decision resulting

Example: (Complaint about new structure on a nursery farm)

**SADC determines** that having farm buildings for equipment storage is a generally accepted **ag management practice**.

**CADB** then has **hearing on the details** (location, size, consideration of municipal ordinances, etc.)

# Public Notice Requirements

## SSAMP Determination

Written notice by commercial farm at its sole expense, via certified mail, RRR &/or personal service to:

- Municipal clerk & land use board secretary where commercial farm is located + within 200 feet of farm adjoining municipality;
- Property owners (on certified list) within 200 feet of commercial farm property;
- SADC;
- County planning board (if commercial farm adjacent to county-owned road/property); and
- NJDOT Commissioner (if commercial farm on State highway)

Written notice to public by publication in official newspaper/general circulation newspaper of municipality

## RTF Complaint

Written notice by the CADB within 10 days of receipt of complaint to:

- Commercial farm owner;
- Commercial farm operator (if applicable);
- SADC; and
- Municipality(ies) where commercial farm is located



*Curzi v. Raub*, N.J. Superior Ct., App. Div. (2010)

N.J.A.C. 2:76-2.8 Hearing Procedures for RTF Cases



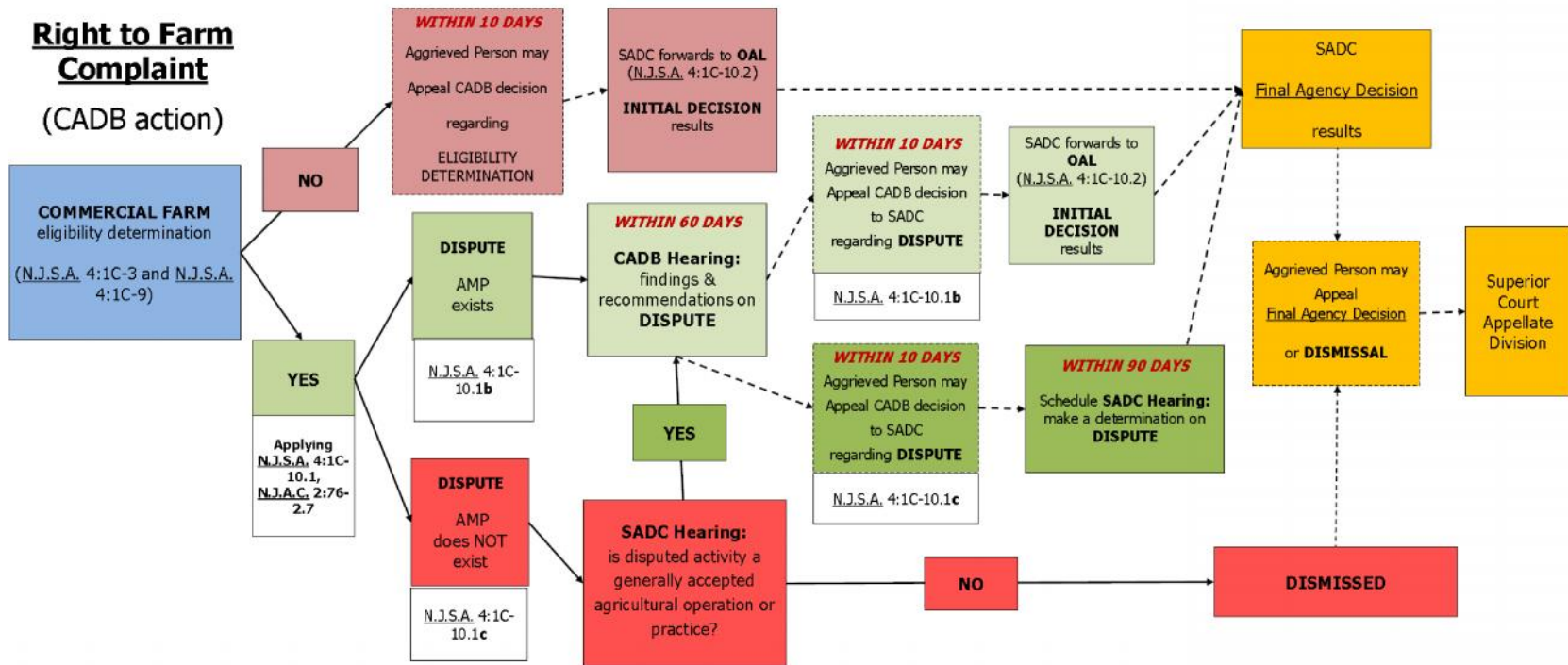
# CADB Resolution Contents

- ❑ CADB determinations **MUST** be in the form of a detailed resolution including *findings of fact and conclusions of law*.
- ❑ References **MUST** be made to any supporting documents that were considered by the CADB in its resolution.
- ❑ These requirements ensure that a comprehensible record is created, should any appeal be filed.



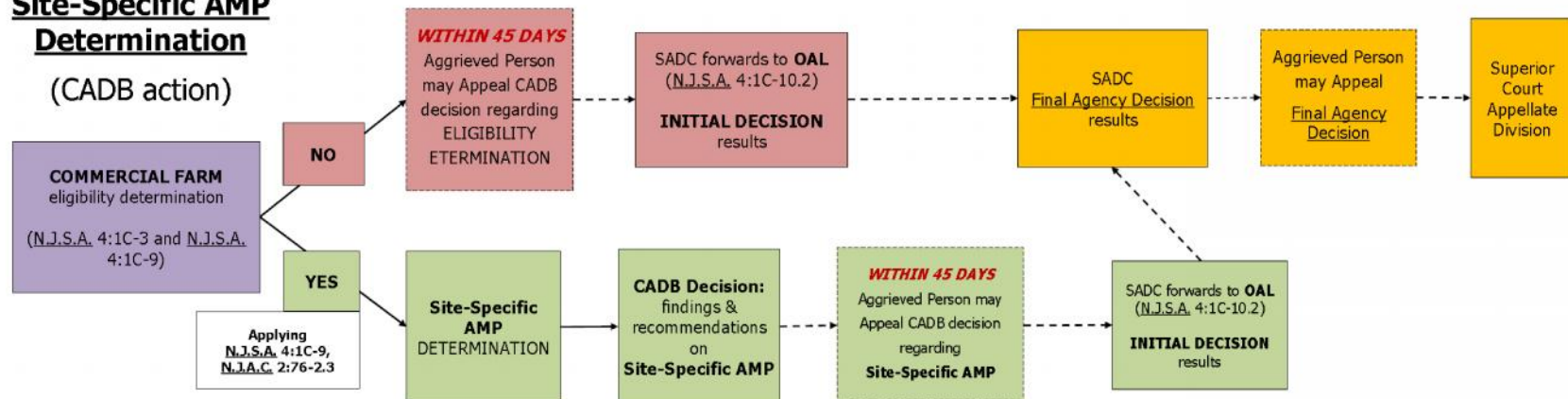
## Right to Farm Complaint

(CADB action)



## Site-Specific AMP Determination

(CADB action)



# Formal Right to Farm Determinations

## RTF Complaints (Conflict Resolution matters)

- [www.nj.gov/agriculture/sadc/rtfprogram/formdet/conflictres/index.html](http://www.nj.gov/agriculture/sadc/rtfprogram/formdet/conflictres/index.html)

## Site-Specific AMPs (SSAMPs)

- <http://nj.gov/agriculture/sadc/rtfprogram/formdet/ssamp/index.html>

## // SADC Website Navigation //

<http://nj.gov/agriculture/sadc/>  
<http://nj.gov/agriculture/sadc/rtfprogram/>  
<http://nj.gov/agriculture/sadc/rtfprogram/formdet/>

# Agricultural Mediation Program

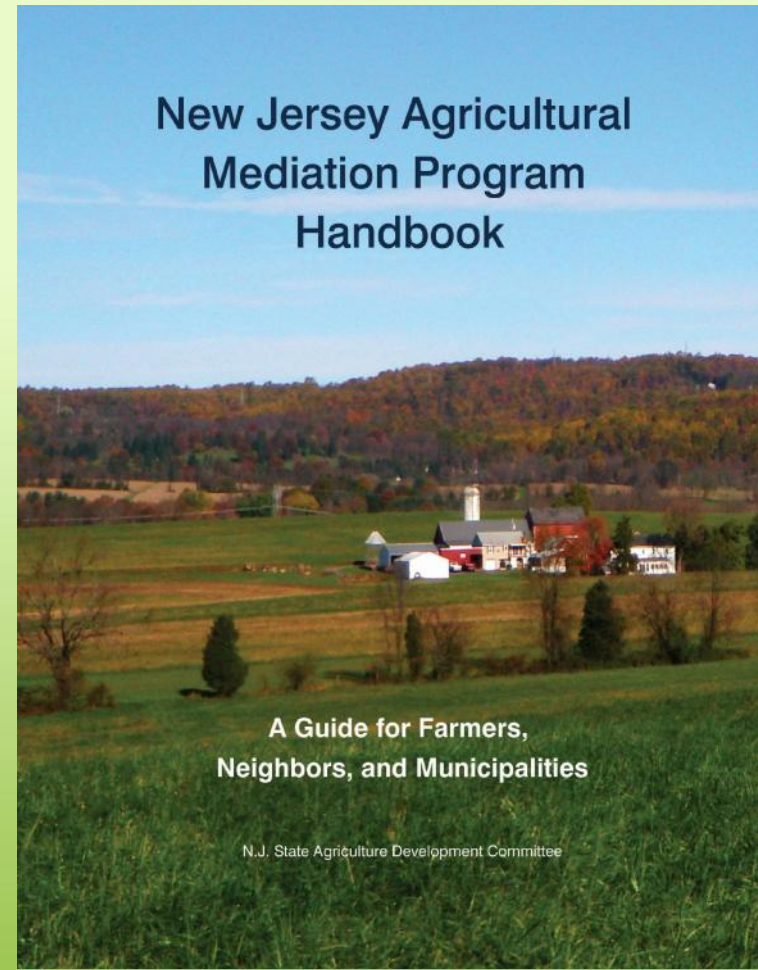
- ❑ The more informal way to resolve conflicts - free service offered by the SADC
- ❑ Mediation is a voluntary process in which a trained, impartial mediator facilitates a discussion between parties with a dispute
- ❑ Parties express their points of view and interests, and mediator helps them narrow the issues and look for solutions
- ❑ CADBs and SADC encourage use of mediation before formal RTF process begins - confidential and easy, can help resolve issues quickly and foster better relationships

# Agricultural Mediation Program

- ❑ For more information:

[http://nj.gov/agriculture/  
sadc/agmediation/](http://nj.gov/agriculture/sadc/agmediation/)

**Ag Mediation Program  
Handbook**



# The Right to Farm Act in New Jersey - For more information:

- ❑ Visit the Right to Farm Program website  
<http://nj.gov/agriculture/sadc/rtfprogram/>
- ❑ Review the presentation materials
- ❑ Contact your local CADB  
<http://nj.gov/agriculture/sadc/farmpreserve/contacts/cadbs.html>
- ❑ Contact the SADC
  - (609) 984-2504
  - [sadc@ag.state.nj.us](mailto:sadc@ag.state.nj.us)
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